

**CARLENE KAY HADL**  
Claimant

STATE OF KANSAS

AND

## STATE SELF-INSURANCE FUND

Docket No. 234,604

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file herein, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant began working for respondent in September 1997. Later, she was moved to a job called "back fryers" which involved heavy lifting. On the fifth day working back fryers, claimant's right wrist became sore. Then, on January 17, 1998, while lifting a pan, claimant felt a snap in her right wrist. She advised Mike, her supervisor, was taken to the hospital and provided conservative care, including a splint on the right wrist, and returned to light duty.

Thereafter, claimant began using the left wrist. Claimant alleges her left wrist began hurting in February 1998, but claimant failed to advise any of her supervisors of this problem. Claimant also, during one point in her testimony, alleged a fall in March 1998, which she testified injured her left wrist. Again, however, claimant failed to advise any of her supervisors of this injury and further failed to seek medical treatment for either the February or March injuries. On June 26, 1998, while cleaning the yogurt machine, claimant's left wrist collapsed. Claimant then sought medical treatment for her left wrist, seeing several doctors including Chris D. Fevurly, M.D., and Bruce Toby, M.D., at the Lawrence Memorial Hospital, and John B. Moore, IV, M.D.

At regular hearing, claimant testified that the left wrist complaints were caused by overcompensation for the right wrist, but claimant failed to obtain or seek medical treatment for the left wrist at any time prior to the specific onset on June 26, 1998.

Claimant was examined by Dr. Moore, an orthopedic surgeon, at the request of her attorney on August 28, 1998. Dr. Moore diagnosed a sudden traumatic pop in the right wrist while lifting a heavy container and assessed claimant a 30 percent functional impairment to the right upper extremity at the forearm. Dr. Moore also diagnosed degenerative incompetency of the scapholunate ligament in her wrists, which he testified was a congenital condition and not work-related. Dr. Moore further assessed claimant a 20 percent impairment of function to the left upper extremity at the forearm for the traumatic injury suffered therein. Dr. Moore opined that claimant's degenerative condition was not related to her work and, while her work activities might cause pain, it would not make the conditions worse. The tears found in claimant's wrists he stated had been there for some time but were aggravated by the injuries of January 17 and June 26, 1998.

Claimant was referred to Dr. Fevurly at the Lawrence Memorial Hospital for treatment. Dr. Fevurly first examined claimant on February 20, 1998, for her right wrist. Dr. Fevurly examined claimant for only right wrist complaints on that date. The neurological examination was normal. Claimant was scheduled for a follow-up appointment on March 6, 1998, which she did not attend. Dr. Fevurly did examine her on March 27, 1998, at which time claimant continued to complain of right wrist pain. Dr. Fevurly offered claimant a splint for the right wrist and pain medication. Claimant expressed significant dissatisfaction with Dr. Fevurly's diagnosis, claiming he had misdiagnosed her condition. When Dr. Fevurly offered to refer claimant to Dr. Wertzberger

for an examination, she refused. At no time, up to this point, did claimant mention her left wrist. During this time period, claimant was also being intermittently examined by Dr. Greco and by Dr. Wayne Tillison in the emergency room.

Dr. Fevurly did not agree with Dr. Toby's diagnosis of scapholunate incompetency, opining that claimant's pain was too diffuse for a scapholunate problem. Dr. Fevurly diagnosed carpal tunnel instability in the right upper extremity and assessed claimant a 5 percent impairment at the wrist for the range of motion loss and a 5 to 6 percent impairment to the right upper extremity for pain. In examining the left upper extremity, he found claimant's neurosensory examinations and range of motion examinations to all be normal. He opined the claimant's pain complaints were too widespread to pinpoint a specific diagnosis. He assessed claimant a zero percent impairment for the left upper extremity.

It was during the June 26, 1998, examination with Dr. Tillison that claimant complained of left wrist pain. Claimant described a sharp pain experienced while cleaning a particular machine at work. Up to that time, claimant had failed to mention her left wrist to any of the doctors who examined and treated her.

Claimant was referred to Edward J. Prostic, M.D., by her attorney for an examination on January 4, 1999. At that examination, claimant for the first time mentioned an alleged fall in December 1997, when claimant supposedly fell backwards onto her hands, suffering bilateral injuries. The record fails to show that claimant mentioned this fall to any of her supervisors. There is also no mention in any of the medical reports prior to Dr. Prostic's January 1999 examination of this alleged fall. Dr. Prostic felt claimant suffered scapholunate disassociation of the wrists bilaterally, and assessed claimant a 23 percent whole body functional impairment. The history provided Dr. Prostic indicated claimant suffered a specific injury and then a worsening of her conditions through repeated use. This history was dissimilar to that provided to Dr. Moore or to Dr. Toby, and also not the same as the history provided to Michael Dreiling, a vocational rehabilitation expert hired by claimant. Dr. Prostic was unaware of claimant's preexisting conditions, and was also not advised of claimant's multitude of medical conditions for which she was receiving treatment. These conditions included grand mal seizures, back problems, heart problems, diabetes, thyroid problems, blood pressure problems, arthritis, anemia, epilepsy, eye disease, preexisting hernias, kidney disease, urinary infections, circulatory problems, ulcers, psychological distress, mitral valve insufficiency, a hysterectomy and cataracts. These medical histories were provided, in part, to Dr. Moore and to Dr. Fevurly, although it does not appear that any one doctor had a complete history of claimant's ongoing physical ailments.

The Administrative Law Judge, in considering the medical opinions of the various doctors, found Dr. Moore's to be the most credible regarding the diagnosis of scapholunate insufficiency. The Administrative Law Judge found claimant to have suffered two scheduled injuries, distinguishing Depew, because the underlying condition in this case was congenital rather than work-related, as was the case in Depew. The Appeals Board

finds that Depew should be distinguished not based upon the underlying condition, but based upon the specific traumas encountered by claimant. In Depew, the Kansas Supreme Court held that, where a claimant's hands and arms are simultaneously aggravated, resulting in work-related injuries to both hands and arms, the injury is compensable as a percentage of disability to the body as a whole under K.S.A. 44-510e. In this instance, claimant has not proven simultaneous aggravation, but rather two specific traumatic injuries several months apart. The occurrence on January 17, 1998, was to claimant's right wrist. The occurrence on June 26, 1998, was a traumatic injury to claimant's left wrist.

Under the facts and circumstances of this case, the Appeals Board finds that the weight of the credible evidence supports two separate and distinct injuries caused by traumatic and sudden injury to claimant's right and left wrists. The evidence does not establish a series of microtraumas or simultaneous injury, and does not support a connection between the right wrist and left wrist injuries. The Appeals Board finds the rationale of the Court of Appeals in Rodriguez v. Henkle Drilling & Supply Co., 16 Kan. App. 2d 728, 828 P.2d 1335 (1992), *rev. denied* 251 Kan. 939 (1992), to be more applicable to this case. The evidence in this case is insufficient to support a finding of simultaneous injury to both wrists, caused either by aggravation from repetitive use or a single traumatic event, so as to remove the injuries from the schedule of K.S.A. 1997 Supp. 44-510d.

The Administrative Law Judge went on to adopt the findings of Dr. Moore regarding claimant's functional impairment of 30 percent to the right upper extremity at the forearm and 20 percent to the left upper extremity at the forearm to be the most credible medical evidence in the record. The Appeals Board agrees and affirms those findings.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Brad E. Avery dated April 14, 1999, should be, and is hereby, affirmed, and claimant is awarded a 30 percent loss of use of the right wrist for an injury occurring on January 17, 1998. Claimant is, therefore, entitled to 60 weeks permanent partial disability compensation at the rate of \$251.98 in the amount of \$15,118.80.

Claimant is further awarded a 20 percent loss of use of the left wrist as a result of the injuries occurring on June 26, 1998. Claimant is, therefore, entitled to 40 weeks permanent partial disability compensation at the rate of \$253.56 per week in the amount of \$10,142.40.

As of the time of this Award, both awards are due and owing in one lump sum minus any amounts previously paid.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are assessed against the respondent and its insurance carrier to be paid as follows:

Metropolitan Court Reporters	Unknown
Curtis, Schloetzer, Hedberg, Foster and Associates	\$213.70
Waters Court Reporting Service	\$251.20
Nora Lyon & Associates	\$ 49.11
Nora Lyon & Associates	Unknown
Gene Dolginoff Associates, Ltd.	\$196.90
Gene Dolginoff Associates, Ltd.	\$260.00

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2000.

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BOARD MEMBER

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c: Chris Miller, Lawrence, KS  
Marcia L. Yates, Topeka, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director